

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUONG HOANG, an individual,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware corporation,
and IMDB.COM, INC., a Delaware corporation,

Defendants.

No. 2:11-CV-01709-MJP

**PLAINTIFF HUONG HOANG'S
MOTION FOR RELIEF FROM
TRIAL DEADLINES AND TO
CONTINUE TRIAL DATE**

NOTE ON MOTION CALENDAR:
June 15, 2012

COMES NOW Plaintiff Huong Hoang ("Plaintiff"), an individual, and requests that this Court extend the deadlines set in this Court's February 6, 2012 Order Setting Trial Date & Related Dates (Dkt. No. 38) (the "Pretrial Order"), including the deadline for filing expert reports, and continue the trial date in this matter, and in support of that request states:

I. INTRODUCTION

This cause is before the Court upon a complaint initially filed on October 13, 2011. *See* Complaint for Damages and Injunctive Relief With Jury Demand (Dkt. No. 1). Defendants did not file a substantive answer to that first complaint, but instead filed motions to dismiss. *See* Defendants' Motion to Dismiss Pursuant to Rule 10(a) (Dkt. No. 12); Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. No. 15) ("first Motion to Dismiss").

This Court set a trial date beginning January 7, 2013 in its February 6, 2012 Pretrial Order with Defendants' first Motion to Dismiss still pending, and based additional pretrial deadlines on that trial date, including a June 11, 2012 deadline for reports from expert witnesses under FRCP 26(a)(2). Plaintiff had asked this Court to consider extending pretrial deadlines in her March 9, 2012 letter inquiring with the Court as to the status of a ruling on Defendants' first Motion to Dismiss, expressing difficulty with discovery "for lack of a responsive pleading addressing the merits." *See* Dkt. No. 39.

The Court ruled on Defendants' first Motion to Dismiss on March 28, 2012 in its Order on the Rule 12(b)(6) Motion to Dismiss (Dkt. No. 42), leaving two of Plaintiff's claims intact, dismissing one claim with prejudice, and dismissing a fraud claim with leave to amend. By April 13, 2012 Stipulation (Dkt. No. 44) the parties agreed that Plaintiff would file a Second Amended Complaint on or before April 25, 2012, and that Defendants would *answer* within 14 days. Plaintiff filed her Second Amended Complaint for Damages and Injunctive Relief with Jury Demand (Dkt. No. 45) but instead of filing a substantive answer Defendants filed Defendants' Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) (Dkt. No. 46) ("second Motion to Dismiss") on May 9, 2012. The second Motion to Dismiss was noted for consideration on May 25, 2012, and no ruling has yet been issued.

The parties have exchanged discovery requests, and on May 24, 2012 held a Federal Rules of Civil Procedure ("FRCP") Rule 37 "meet and confer" conference. The parties are in agreement that a Protective Order is needed, but have not yet been able to agree on appropriate

1 language. A major point of contention is the position taken by Amazon that, despite being a
 2 named defendant and the parent company of the other named defendant, it is essentially exempt
 3 or immune from discovery and will answer only “with respect to [Amazon’s] involvement in
 4 processing payments by IMDb.com users for the IMDb.com subscription service only.” *See*
 5 Declaration of John W. Dozier, Jr. in Support of Plaintiff Huong Hoang’s Motion For Relief
 6 From Trial Deadlines and to Continue Trial Date, Exhibit A (“Exhibit A”) at General Objection 8
 7 and Interrogatory responses including Nos. 2, 3, 4, 6, 7 (by incorporation), 8, 9, 10 (by
 8 incorporation), 12, 13, and 14; Exhibit B (“Exhibit B”) at General Objection 8 and responses to
 9 Requests for Production including Nos. 3, 4, and 5. While the parties are in general agreement
 10 that a Protective Order will resolve some of the discovery disputes addressed in their Rule 37
 11 conference, it is very likely that additional disputes will remain unresolved and the parties will be
 12 forced to ask this Court to address them. Given that it is still not clear what claims will go
 13 forward following Defendants’ second Motion to Dismiss and given that Defendants still have not
 14 articulated defenses, additional discovery requests are also likely. Discovery is not even nearly
 15 complete in this matter. In fact, it has barely begun.

16 The parties discussed Plaintiff’s interest in extending the pretrial deadlines and continuing
 17 the trial date in this matter in their Rule 37 conference but Defendants, after consideration, did not
 18 agree.

19 As of the time of filing of this Motion, Defendants have filed no substantive answer and
 20 raised no substantive defenses in this matter, and as described herein, none appears to be soon
 21 forthcoming.

22 **II. STANDARD OF REVIEW**

23 Pursuant to this Court’s February 6, 2012 Pretrial Order, the pretrial deadlines and trial
 24 date will be altered “for good cause shown.” *See* Pretrial Order at 2.

1 III. ARGUMENT

2 A. This Court Should Relieve the Parties of the June 11, 2012 Deadline for Filing 3 of Expert Reports

4 Plaintiff first filed this claim nearly eight months ago, yet still does not have a clear
5 indication of which of her claims will go forward to trial or what defenses Defendants will raise at
6 trial. This Court set a trial date nearly four months ago when there was a reasonable expectation
7 that a substantive answer on the merits would be shortly forthcoming, and has based all other
8 pretrial deadlines, including the impending June 11, 2012 deadline for filing expert reports, on
9 both that trial date and that, now quashed, reasonable expectation of a forthcoming answer on the
10 merits of this case. Plaintiff respectfully represents to this Court that the lack of a substantive
11 answer on the merits or any pleading enunciating defenses constitutes “good cause shown” for
12 relief from pretrial deadlines.

13 Plaintiff was concerned regarding the answer and issuance of discovery without either a
14 substantive answer on the merits of her claim or even an indication of the defenses upon which
15 Defendants will rely. *See* March 9, 2012 letter (Dkt. No. 39). In fact, in their still pending
16 second Motion to Dismiss, Defendants obliquely and without filing a specific motion threaten
17 further challenge to the claims against Amazon.com. *See* second Motion to Dismiss at 2, lines
18 17-21. As indicated above, the parties are still embroiled in a discovery dispute in which Amazon
19 claims itself essentially exempt from discovery. Stated simply, for reasons beyond her control
20 Plaintiff is in no position to realistically anticipate what information her experts may need in
21 order to draft reports, to provide information regarding Amazon to those experts for the drafting
22 of such reports due to Amazon’s failure to participate in discovery, or even to determine what
23 experts she will ultimately need in this matter.

24 Because it would be uniquely unjust to require a Plaintiff to provide expert reports either
25 to support claims where it is not yet clear what those claims will be or to refute defenses that have
26 not yet even been raised by the Defendants, this Court should relieve the parties of the June 11,

2012 deadline for filing of expert reports set in the Pretrial Order and other pretrial deadlines. Plaintiff should at least have a reasonable amount of time following the conclusion of fact discovery to provide expert reports.

B. This Court Should Continue the Trial Date Beginning January 7, 2013 in This Matter

All of the deadlines set in this Court's February 6, 2012 Pretrial Order are based on the trial date beginning January 7, 2013 which, as indicated above, was based on the now quashed reasonable expectation that Defendants would file an answer on the merits in this matter shortly after the entry of that Order and discovery would progress rapidly. Instead, the Court permitted two of four claims to go forward and another to be amended nearly two months after the entry of that Pretrial Order. Even after the amendment of the initial complaint and the passage of two additional months there still is no answer on the merits – not even on the two claims the Court permitted to go forward without amendment, which Defendants appear inclined to challenge yet again. *See* second Motion to Dismiss at 2, lines 17-21.

The deadlines that seemed reasonable in anticipation of an impending answer four months ago are now impossible to comply with: Apart from the June 11, 2012 deadline for expert reports referenced above, currently the pretrial deadlines require that any discovery motions in this matter must be filed by July 11, 2012. Given 30 days for a response, this will preclude the issuance of discovery based on any substantive answer filed by Defendants or the filing of any discovery Motions with the Court (e.g. Motions to Compel) related to such discovery unless a substantive answer is filed within eleven days of today. The Pretrial Order leaves just over two months from today to *complete* discovery and just over three months from today to file dispositive motions. It is worthy of mention that Defendants, in the January 27, 2012 Joint Status Report and Discovery Plan (Dkt. No. 36) at lines 2-3, requested “a discovery cut-off date of six (6) months after Defendants file their Answer.” Defendants have yet to file that answer. In the absence of, at a minimum, any meaningful idea of the defenses to be raised at trial, meeting these deadlines is not

possible.

IV. CONCLUSION

For reasons outside of her control Plaintiff finds herself almost eight months after filing her Complaint in this matter with no substantive answer to the merits of her claims and no indication what defenses Defendants will rely upon at trial. Still, as a result of a trial date set before a ruling on Defendants' first Motion to Dismiss, Plaintiff finds herself facing rapidly impending deadlines despite awaiting a ruling on Defendants' second Motion to Dismiss, which contemplates still a third Defendants' Motion to Dismiss. For reasons beyond her control, Plaintiff cannot reasonably be expected to know what claims or defenses will be at issue in any trial, and therefore cannot reasonably be expected to meet trial deadlines established with the expectation that an answer on the merits of her claim would have been filed shortly thereafter. At a minimum, this Court should relieve Plaintiff of the June 11, 2012 deadline for filing expert reports and other discovery deadlines and extend those dates to some time after the filing of a substantive answer by the Defendants. This Court should also continue the trial date beginning January 7, 2013 to give the parties the opportunity to meaningfully address the claims and defenses ultimately raised in this matter.

Plaintiff defers to the Court regarding whether a scheduling conference should be held to reschedule the trial date or pretrial deadlines in this matter. Consistent with Defendants' request in the January 27, 2012 Joint Status Report and Discovery Plan (Dkt. No. 36) at lines 2-3 that discovery close six months after the filing of Defendants' answer, Plaintiff suggests continuing the trial date and pretrial deadlines by six months.

DATED this 1st day of June, 2012.

Respectfully Submitted,

DOZIER INTERNET LAW, P.C.

By: /s/ John W. Dozier, Jr.
 John W. Dozier, Jr., Esq., VSB No. 20559
Admitted pro hac vice
 11520 Nuckols Rd., Suite 101
 Glen Allen, Virginia 23059
 Telephone: (804) 346-9770

Facsimile: (804) 346-0800
Email: jwd@cybertriallawyer.com

NEWMAN DU WORS LLP

Derek A. Newman, Esq., WSBA 26967
Randall Moeller, Esq., WSBA No. 21094
1201 Third Avenue, Suite 1600
Seattle, Washington 98101
Telephone: (206) 274-2800
Facsimile: (206) 274-2801
Email: derek@newmanlaw.com
randy@newmanlaw.com

Attorneys for Plaintiff Huong Hoang

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CERTIFICATE OF SERVICE

I certify that on this 1st day of June, 2012, I electronically filed the foregoing PLAINTIFF HUONG HOANG'S MOTION FOR RELIEF FROM TRIAL DEADLINES AND TO CONTINUE TRIAL DATE with the Clerk of the Court using the CM/ECF system, thereby sending notification of such filing to the following attorneys of record:

Charles C. Sipos (csipos@perkinscoie.com)
Breena Michelle Roos (broos@perkinscoie.com)
Ashley A. Locke (alocke@perkinscoie.com)
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099

Attorneys for Defendants Amazon.com, Inc. and IMDb.com, Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of June, 2012.

DOZIER INTERNET LAW, P.C.

By: /s/ John W. Dozier, Jr.
John W. Dozier, Jr., Esq., VSB No. 20559
Admitted pro hac vice
11520 Nuckols Rd., Suite 101
Glen Allen, Virginia 23059
Tel: (804) 346-9770
Fax: (804) 346-0800
Email: jwd@cybertriallawyer.com

NEWMAN DU WORS LLP

Derek A. Newman, Esq., WSBA 26967
Randall Moeller, Esq., WSBA No. 21094
1201 Third Avenue, Suite 1600
Seattle, Washington 98101
Telephone: (206) 274-2800
Facsimile: (206) 274-2801
Email: derek@newmanlaw.com
randy@newmanlaw.com

Attorneys for Plaintiff Huong Hoang